

## REMARKS

This Response is submitted in response to the Office Action of January 31, 2006. Claims 1-17 and 23-44 are pending. Claims 1-2, 16, 23 and 29 are amended by this response. No new matter is introduced by these amendments. The Commissioner is hereby authorized to charge deposit account 02-1818 for any fees which are due and owing.

### **Power of Attorney by Assignee and Express Revocation of Prior Powers**

Please note the Power of Attorney by Assignee and Express Revocation of Prior Powers submitted herewith appointing the attorneys and agents identified with customer number 29180 to prosecute and transact all business in the United States Patent and Trademark Office for this application. Accordingly, also please note the new correspondence address and docket number.

### **Obviousness-Type Double Patenting Rejections**

Claims 1-17 and 23-44 were rejected for obviousness-type double patenting in view of U.S. Patent No. 6,709,336 (“the ‘336 patent”). Applicant has filed a Terminal Disclaimer with this response to obviate the non-statutory double patenting rejection. As a result, Applicants submit that this rejection is overcome.

### **35 U.S.C. 112 Rejections**

Claim 16 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Office Action stated that there was insufficient antecedent basis for the limitation “the second gaming device”. Applicant has amended Claim 16, and respectfully submits that this rejection is overcome.

### **35 U.S.C. 102(b) and 35 U.S.C. 103(a) Rejections**

Claims 1-6, 11-12, 14-15 and 30-34 were rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Publication No. JP 2000308,763 (“Ebisawa”). Claims 7-10 were

rejected under 35 U.S.C. 103(a) as being unpatentable over Ebisawa. Applicants respectfully disagree.

Claim 1 relates to a gaming device including a scanner, processing means and a storage medium. The scanner scans a bar code corresponding to a product identification. The processing means receives the bar code from the scanner, translates the bar code to game data and determines whether the game data are compatible game data. The storage medium stores the compatible game data. The game data can include character data for one of a plurality of characters. At least two of the plurality of characters are associated with a group, and a third of the plurality of characters is not associated with the group. The at least two of the plurality of characters do not engage each other in battle.

Ebisawa discloses a handheld game in which a bar code reader scans bar codes to further the game. Bar codes can be associated with products and companies, and bar codes are associated with characters which can do battle. However, Ebisawa does not disclose or suggest groups or tribes of characters which do not engage their fellow group or tribe members in contests or battle. For at least these reasons, Applicants respectfully submit that Ebisawa does not disclose or suggest that game data can include character data for one of a plurality of characters, that at least two of the plurality of characters are associated with a group, that a third of the plurality of characters is not associated with the group, and that the at least two of the plurality of characters do not engage each other in battle as in Claim 1.

For at least these reasons, Applicants respectfully submit that Claim 1 and Claims 2-17 and 30-34 which depend from Claim 1, are each patentably distinguished over Ebisawa and are in condition for allowance. For similar reasons, Applicants respectfully submit that Claims 23 and 29, Claims 24-28 and 35-39, which depend from Claim 23, and Claims 40-44, which depend from Claim 29, are each patentably distinguished over Ebisawa and are in condition for allowance.

Further, with respect to Claim 2, Ebisawa does not disclose or suggest a non-character item being used by a character during battle. For at least this reason, Applicants respectfully submit that Claim 2 is patentably distinguished over Ebisawa and is in condition for allowance.

Claims 13, 16-17, 23-29 and 35-44 were rejected as being obvious in view of Ebisawa in view of U.S. Patent No. 5,971,855 (“Ng”). Applicants respectfully disagree.

Ng discloses a game device which can communicate with a similar game device for interactive play between the two devices. However, similar to Ebisawa, Ng does not disclose or suggest that game data can include character data for one of a plurality of characters, that at least two of the plurality of characters are associated with a group, that a third of the plurality of characters is not associated with the group, and that the at least two of the plurality of characters do not engage each other in battle as in Claim 1.

For at least these reasons, Applicants respectfully submit that Claim 1 and Claims 2-17 and 30-34 which depend from Claim 1, are each patentably distinguished over Ebisawa in view of Ng and are in condition for allowance. For similar reasons, Applicants respectfully submit that Claims 23 and 29, Claims 24-28 and 35-39, which depend from Claim 23, and Claims 40-44, which depend from Claim 29, are each patentably distinguished over Ebisawa in view of Ng and are in condition for allowance.

An earnest endeavor has been made to place this application in condition for formal allowance and Applicants respectfully request that a Notice of Allowance be issued. If the Examiner has any questions regarding this Response, Applicants respectfully request that the Examiner contact the undersigned

Respectfully submitted,

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BY



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